

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS-ST. JOHN**

CLEARVIEW FINANCIAL SERVICES, LLC
and ISLAS FUND, LLLP,
Plaintiffs,
v.

MARCIA WEISS

Defendant.

Action for Debt and Foreclosure
File No. ST-11-CV-88

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION TO COMPEL DISCOVERY**

The Plaintiffs, by counsel, hereby move to compel the defendant to answer certain discovery requests pursuant to Rule 37.1. In this regard, the Plaintiffs sent certain discovery requests to the defendant pursuant to Rules 33 and 34, which were only partially answered. A request for a meet and confer was sent, as required by Local Rule 37.1 regarding the deficient responses. On April 10, 2012, the parties held a meet and confer conference and resolved some, but not all of the outstanding matters. As such, the Plaintiffs seek an order from this Court to compel the Defendant to supplement her responses to the following four items, along with an award of fees and costs in having to file this motion.

There are four specific requests that remain in dispute, but the Plaintiffs only seek to compel two of these items at this time, as it has decided not to seek the Defendant's social security number or an authorization for her educational records at this time. The remaining two requests in dispute (with the Defendant's responses) are attached as Exhibit A (containing the Rule 34 item in dispute) and

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Exhibit B Containing the Rule 33 item in dispute). As these items relate to the Defendant's answer and counterclaim, a copy of those pleadings are attached as Exhibit C. These two items will be discussed in the order addressed by counsel at the meet and confer conference as follows:

- 1. Document Request #5**-As noted in the attached request, this request seeks the defendant's tax returns for the years between 2004 and 2006. In this regard, this case involves a loan for \$400,000 received by the Defendant from the Plaintiffs so that she could purchase property on St. Thomas, which was closed in February of 2007. The Defendant has alleged that she could have obtained a loan from a traditional institutional lender, such as a bank, to consummate the purchase of the property in question if she had needed to do so. Hence, she has put into issue her ability to borrow funds on the open market. As institutional lenders normally looks at a party's ability to repay a loan, the Plaintiffs believes the Defendant's tax records for the limited period in question are relevant to challenge the credibility of the Defendant's assertion that she could have obtained such a loan for this closing.
- 2. Interrogatory Request #10**-This interrogatory seeks the Defendant's annual income for the years 2004 through 2006 as well as a list of her assets and liabilities as of February, 2007, when the loan transaction giving rise to this litigation closed. Again, the Defendant has alleged that she could have obtained a loan from a traditional institutional lender, such as a bank, to consummate the purchase of the property in question if she had needed to do so. Hence, she has put into issue her ability to borrow funds on the open market. As institutional lenders normally looks at a party's ability to repay a loan, the Plaintiffs believes the Defendant's tax records for the limited period in question are relevant to challenge the credibility of the Defendant's assertion that she could have obtained such a loan for this closing.

The Plaintiffs respectfully submit the information sought above is relevant to the issues in this case as set forth herein, so that an order compelling discovery should be granted. The Plaintiffs also seek an award of fees and costs.

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Dated: April 17, 2012

/s/ Joel H. Holt
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CERTIFICATE OF SERVICE

I HEREBY certify that on this 17th Day of April, 2012, I electronically filed the foregoing with the Clerk of the Court using the DC/ECF system, which will send a notification of such filing (NEF) to the following:

Gregory H. Hodges, Esq.
Dudley, Topper and Feuerzeig, LLP
Box 756
St Thomas, USVI 00804

/s/Joel Holt